ILRB
#199

BEFORE
EDWIN H. BENN
ARBITRATOR

In the Matter of the Arbitration

between

CITY OF HIGHLAND PARK

and

TEAMSTERS LOCAL UNION NO. 714

CASE NO.: S-MA-98-219
Arb. Ref. 99.028
(Interest Arbitration)

OPINION AND AWARD

APPEARANCES:

For the City: Bruce C. Mackey, Esq.

For the Union: Robert L. Costello, Esq.

Place of Hearing: Highland Park, Illinois

Date of Hearing: June 28, 1999

Dates Briefs Received: August 20, 1999 (City); August 23, 1999 (Union)

Date of Award: September 26, 1999

CONTENTS

I. BACKGROUND

This is an interest arbitration.

The Union has represented the City's full-time police officers below the rank of sergeant since 1994. The predecessor Agreement was in effect during the period May 1, 1995 through April 30, 1998. Jt. Exh. 2. That Agreement was completed also as a result of an interest arbitration. *City of Highland Park*, S-MA-96-13 (Perkovich, 1996). Jt. Exh. 5 ("*Perkovich Award*").

The parties have been unable to reach agreement on all issues for a successor Agreement for the period beginning May 1, 1998 and have invoked the procedures for interest arbitration under Section 14 of the Illinois Public Labor Relations Act ("Act").[1]

II. ISSUES IN DISPUTE

There are three issues in dispute (Submission Agreement at par 7):

1. Hospitalization Insurance
2. Residency
3. Discipline

[1] The parties waived the tripartite arbitration panel. Submission Agreement at par. 2.

III. THE STATUTORY PROVISIONS

The statutory provisions governing the issues in this case are found in Sections 8 and 14 of the Act:

Section 8. Grievance Procedure

> The collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise. Any agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement. The grievance and arbitration provision of any collective bargaining agreement shall be subject to the Illinois "Uniform arbitration Act". The costs of such arbitration shall be borne equally by the employer and the employee organization.

* * *

Section 14. Security Employee, Peace Officer and Fire Fighter Disputes.

* * *

> (g) ... As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

* * *

> (h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order

upon the following factors, as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

(i) In the case of peace officers, the arbitration decision shall be limited to wages, hours, and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois) ....

IV. DISCUSSION

A. Hospitalization Insurance

The Union seeks to modify Article 16.1 of the Agreement to read as follows (Union Exh. 7; Union Brief at 2-7)[2]:

ARTICLE XVI

INSURANCE

Section 16.1. Health Insurance. During the term of this Agreement, the ~~employer~~ City shall maintain in effect a the current health insurance ~~plan~~ benefits for the members of the bargaining unit.

The parties recognize the need for flexibility on the part of the City in dealing with ~~the~~ issues of hospi-

[2] Added language is underscored, removed language is stricken through.

> talization benefits and costs. Accordingly, the parties agree that the City may make changes to its current policy with respect to such matters as carriers and cost containment ~~matters~~, provided such changes do not effectively and substantially reduce the current level of benefits ~~or impose copayments in excess of ten percent of the costs of the premiums~~. The City may require bargaining unit employees to contribute up to 10% of the annual premium, provided such premium contribution is required of all other City employees in like amount.

The City seeks to maintain the existing language. City Exh. 1; City Brief at 2-9.

In simple terms, the Union's proposed changes would lock in the current health insurance benefits and would allow contributions by bargaining unit members toward premiums only if all other City employees are required to do so in like amount.

There is a history behind the existing language. In 1996, Arbitrator Perkovich selected the City's offer for a 10% co-pay and rejected the Union's proposal that no such payments be required. Jt. Exh. 5 at 9, as corrected by order of July 1, 1996 (*id.* at 12). The City then imposed a 10% premium contribution only on the bargaining unit which was retroactive to May 1, 1995 which in turn prompted a grievance and an arbitration in *City of Highland Park*, FMCS No. 98-004452 (Hill, 1999). Jt. Exhs. 7, 8 at Tr. 7-8. Arbitrator Hill denied the Union's grievance finding (Jt. Exh. 7 at 9-10):

> ... in the interest arbitration before Arbitrator Perkovich the parties understood that management's insurance proposal ... was for a ten percent co-payment which was to be retroactive to the beginning of the 1995-96 contract year. This was the issue before Arbitrator Perkovich who ruled for the Administration. Based on the evidence record, I have absolutely no choice but to rule for management on the grievance before me.

The Union argues here (Union Brief at 4) that it "proposes to put unit employees back in line with all other City employees, where they were at the time of the Arbitrator Perkovich's Award ... [and] notes its disagreement with Arbitrator Hill's interpretation of Arbitrator Perkovich's Award and his reasoning in finding that the current language does not speak to a discretionary authority of the City to impose premium contributions." The Union further argues (*id.*) that "Arbitrator Perkovich had no authority under the Act to amend or modify the City's offer." The Union further "submits that the circumstances as they exist now call for a more searching consideration of internal comparability than was perhaps done in the earlier proceedings before Arbitrator Perkovich" and then points to the firefighters contract

where the language "is substantially identical" to the Union's present offer. The Union further argues (Union Brief at 7) that "[t]he current premium contribution imposed on unit employees herein is purely discriminatory in both its effect and its intent."

The Union's arguments are not persuasive.

This is the Union's third bite at the apple on this issue in approximately three years. The Union lost the issue before Arbitrator Perkovich in 1996 and before Arbitrator Hill in 1999. For me to now agree with those same arguments as a basis for accepting the Union's offer to change the existing language would turn notions of stability and finality on their heads.

However, this is an interest arbitration and the factors set forth in Section 14(h) must be utilized on this economic issue. Because the Union is seeking a change, it bears the burden of demonstrating why the change is necessary.[3] Because the Union has twice lost this issue in the past approximate three years, in this case the Union's burden must be a substantial one. That burden has not been met.

First external comparability must be considered.[4] As the City points out (City Brief at 3), in 1996 Arbitrator Perkovich found that three of the comparables he examined had no provisions for employee co-pays. *See* Jt. Exh. 5 at 9.[5] According to the evidence before me, only one comparable (Palatine) now has no such provision. City Exh. 11 at 4; Contract Binder, Palatine Agreement at Article 19.1. Further, while Arbitrator Perkovich found that a 10% co-pay was "at the high end of the comparables" (Jt. Exh. 5 at 12), the co-pay now required is

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[3] "Arbitrators may require 'persuasive reason' for elimination of a clause which has been in past written agreements." Elkouri and Elkouri, *How Arbitration Works* (BNA, 4th ed.), 843. *See also*, my award in *Cook County and Cook County Sheriff and Metropolitan Alliance of Police*, L-MA-97-009 (1998) at 21 ("Because it is seeking the change, the Union bears the *[footnote continued]*

[continuation of footnote]
burden to demonstrate why the change of language is necessary.").

[4] For purposes of this case, the parties have agreed to use the comparable communities found appropriate in the *Perkovich Award* (Jt. Exh. 5 at 4 — Elk Grove Village, Wheeling, Morton Grove, Rolling Meadows, Deerfield, Glenview, Park Ridge, Wilmette, Northbrook, Palatine, Buffalo Grove, Lake Forest, Elmhurst, and Mount Prospect), except the parties agreed to omit all references to the Villages of Glenview and Buffalo Grove. Submission Agreement at par. 9.

[5] It is not clear which of the comparables Arbitrator Perkovich referenced. As earlier noted (*see* note 4), in this proceeding the parties have agreed to omit reference to two of the comparables used by Arbitrator Perkovich.

more favorable when compared to other communities. *See* City Exh. 11 which shows the following[6]:

Community	Single	Family
Elk Grove Village	29/43	86/90
Wheeling	9/19	28/34
Morton Grove	23	71
Rolling Meadows	14/11	49/32
Lake Forest	0	89.80/54.40
Deerfield	0	50
Northbrook	0	45
Mount Prospect	17.50	48
Elmhurst	10%	10%
Palatine	0	0
Wilmette	0	68/70/59
Park Ridge	20/25	55/60
Highland Park	19/26	53/71

In terms of internal comparability, for the sake of discussion I will accept the Union's assertion that only the bargaining unit has the co-pay requirement. *See* Union Brief at 5 ("... the City's actions in imposing the contribution requirement on unit employees alone ...."). There is no requirement here that all groups of employees receive the exact benefits and have the same precise conditions of employment.[7] If that were the case, the bargaining unit's pay rates or other benefits which differ from other City employees would be in jeopardy. At best, internal comparability may favor the Union's position. However, when weighted against the facts that this provision was imposed by a prior interest arbitration; a grievance arbitration rejected the Union's attempts to rescind the effect of that provision; and external comparability shows that other similarly situated communities have similar requirements, I find that the Union's burden cannot be met.

The City's offer on insurance is selected.[8]

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6 Unless a percentage is indicated, the figures are in dollars. If more than one number is provided, it is because the community has more than one insurance plan. *See* City Brief at 3-4. The City's analysis in City Exh. 11 is not disputed.

7 Indeed, *see* the discussion *infra* at IV(C) where this unit has accomplished arbitration of discipline to a much greater extent than the firefighters.

8 The Union's reliance (Union Brief at 6-7) on my award in *Village of Oak Brook*, S-MA-96-73 (1996) is misplaced. That case arose in the context of an insurance reopener where the negotiating teams reached agreement, but that agreement was not ratified. In the resulting interest arbitration, Oak Brook sought to impose an insurance co-pay only based upon the theory that to do so would have the desired effect to hold down costs. I found that while the concept was reasonable, Oak Brook could not do so because the evidence did not show that Oak Brook had an adverse premium experience — indeed, "the evidence strongly suggests that, in many respects over the course of the Agreement, the Village's costs have gone *down*." *Id.* at 9 [emphasis in original]. Given the rejection of the tentative agreement and the evidence which did not support the reasons for Oak Brook's offer, *Oak Brook* presented a unique set of facts. That is not this case.

Oak Brook actually works against the Union's position. *Oak Brook* placed the burden on the village because it was seeking the change to allow for co-pays. Here, after

[footnote continued]

B. Residency

The parties propose to add a new section to the Agreement governing residency.

The Union proposes the following (Union Exh. 7; Union Brief at 11-13):

> **Section 12.9. Residency.** Bargaining unit employees shall reside within the State of Illinois.

The City proposes the following (City Exh. 1; City Brief at 13-15):

> Employees covered under this agreement shall reside within the following boundaries:
>
> - Wisconsin/Illinois State Line on the north
> - Lake/McHenry County Line and Kane/Cook county Line on the west
> - Route 20 from the Cook County Line to Route 64, and Route 64 to Lake Michigan on the south.

The Union's proposal would permit an officer to live anywhere in the State. The City's proposal follows the residency provisions found in Section 19.7 of the City's 1996-1999 firefighters contract (Jt. Exh. 4) and essentially encompasses an area including the north side of Chicago and the north and northwest suburbs of the Chicago metropolitan area and some of the more rural areas towards the Wisconsin state line.

The Union argues (Union Brief at 12) that it "seeks to eliminate residency to the extent permitted under Section 14(i) of the Act ...." According to the Union (*id.*):

> The reason for its elimination is that it regulates off-duty conduct without justification. It limits the freedom of employees in areas that are normally viewed as fundamental: the right to travel and to select one's place of residence. It limits employees' family choices as to schools, church and countless other community based matters.
>
> ... The simple fact is that the City has available means for dealing with the emergency backup needs of its officers, and with matters of attendance, which obviate any need for these unit employees to live close at hand. The city's offer is not "reasonable" ....

The City counters that argument (City Brief at 14) pointing to its needs of having officers readily available in emergency situations, promoting an interest incentive and identity with the governmental unit of employment, increasing familiarity with its geography and inhabitants and more effectively deterring crime.

The provisions in Section 14(i) of the Act concerning residency are relatively new (since 1997). The

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[continuation of footnote]
an interest arbitrator and a grievance arbitrator have ruled against the Union, the burden is heavily placed on the Union because *it* is the party seeking the change concerning co-pays. *Oak Brook* does not assist the Union's position.

Union's proposal would permit a Highland Park police officer to live as far away as Cairo, Illinois — a somewhat lengthy commute (approximately 400 miles) in the event a call to duty outside of scheduled hours was required. As the City points out (City Brief at 15), if the legislature intended to eliminate the residency requirement (or limit residency solely to areas within the State's borders) that would have been an easy legislative task. Instead, the legislature crafted Section 14(i) to place residency requirements into the realm of "wages, hours and working conditions" which are appropriate for these types of proceedings.

Ultimately, the question really goes to the reasonableness of the offers. The City's proposal gives officers the ability to live in a vast assortment of communities in Chicago and the Chicago metropolitan area and at the same time be available for service if needed to protect the lives and property of citizens of Highland Park. The Union's offer allows officers whose services may be necessary for emergency situations to live hundreds of miles away effectively making them unavailable for such calls. The City's offer is the far more reasonable.[9]

The City's offer on residency is selected.

C. Discipline

Article 5.1 of the predecessor Agreement provides:

> **ARTICLE V**
>
> **GRIEVANCE PROCEDURE**
>
> **Section 5.1. Definition.** A "grievance" is defined as a dispute or difference of opinion raised by an employee or the Union, against the City involving the meaning, interpretation, or application of this Agreement except that any dispute or difference of opinion concerning a matter or issue subject to the jurisdiction of the Civil Service Commission shall not be considered a grievance under this Agreement.

The Union proposes (Union Brief at 9) "... that employees have a choice of proceeding though the grievance procedure over matter[s] of discipline, regardless of the level and in lieu of the civil service procedures presently available for suspensions of greater than five days and discharge." *See also*, Union Exh. 7 (which sets forth a detailed proposed disciplinary procedure for election of

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9 The fact that the City may be able to rely upon other communities for assistance in emergencies (*see* Union Brief at 12-13) cannot change the result. The City's primary source is its own officers who, under the Union's proposal, could be many hours away. The City and its citizens should not be put in that position.

forums between the grievance procedure and the Civil Service Commission).

The City proposes (City Exh. 1; City Brief at 9) that Article 5.1 read as follows:

> **Section 5.1. Definition.** A "grievance" is defined as a dispute or difference of opinion raised by an employee or the Union, against the City involving ~~the meaning, interpretation, or application~~ an alleged violation of an express provision of this Agreement of this Agreement, except that any dispute or difference of opinion concerning a suspension of more than five (5) days or a second suspension in any six (6) month period, or a discharge, or a demotion, or any dispute concerning hiring or promotion shall not be subject to the grievance procedure under this Agreement but shall be ~~matter or issue~~ subject to the jurisdiction of the Highland Park Civil Service Commission ~~shall not be considered a grievance under this Agreement~~. Suspensions of five (5) days or less shall only be for just cause.

Thus, for discipline, the Union seeks an election between arbitration under the Agreement and appeal to the Civil Service Commission while the City proposes arbitration for suspensions of five days or less.

1. Must The Agreement Contain An Arbitration Provision For Discipline?

The first question is whether the Agreement must contain an arbitration provision for discipline? I find that it must.

Section 8 of the Act requires that "[t]he collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall* provide for final and binding arbitration of disputes concerning the *administration or interpretation* of the agreement unless mutually agreed otherwise" [emphasis added]. In Article 3.1, the City has the right to "discipline, to suspend, and discharge employees". Since the parties have not "mutually agreed otherwise", the language "*shall* provide for final and binding arbitration of disputes concerning the *administration or interpretation* of the agreement" in Section 8 of the Act therefore resolves the question [emphasis added]. According to Section 8 of the Act, there must be an ability to appeal to arbitration over the "administration or interpretation of the agreement" which includes the provisions concerning discipline.

I faced this issue early on in *City of Springfield*, S-MA-89-74 (1990) where Springfield sought to retain the then existing language similar to the City's proposal in this case requiring exclusive review by its civil service commission for disciplinary actions in excess of five days, while

the union sought an election of review of disciplinary matters by the civil service commission or though arbitration under the collective bargaining agreement. I found that Section 8 of the Act required selection of the union's proposal. *Id.* at 1-5.[10] As the Union correctly argues (Union Brief at 9), this is essentially the same case as *Springfield.*

I recognize as the City points out (City Brief at 11) that the firefighters in the City do not have the election of forums sought by the Union.[11] The City argues (City Brief at 10-11) that with respect to agreed upon external communities, it appears that only Northbrook has a contract clause which allows officers to arbitrate suspensions and discharges and that the Wilmette contract provides for disciplinary arbitrations, but only where the discipline is discharge or a suspension in excess of five days. *See* City Exh. 9. But these internal and external comparisons must be weighted against the clear mandate found in Section 8 of the Act that the Agreement "*shall* provide for final and binding arbitration of disputes concerning the *administration or interpretation* of the agreement". By excluding discipline — a provision of the Agreement found in Article 3.1 — from arbitration, I have not "provide[d] for final and binding arbitration of disputes concerning the *administration or interpretation* of the agreement". The City's comparability arguments therefore do not defeat the Union's position.[12]

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[10] Although coming fairly early on in the history of interest arbitrations in the State, that decision was not one of first impression at the time. The same conclusion was reached in *Will County Board and Sheriff of Will County* (Nathan, 1988) at 56 and *City of Markham*, S-MA-89-39 (Larney, 1989) at 19.

[11] The 1996-1999 firefighters contract at Article 5.1 contains language like that proposed by the City in this case. Jt. Exh. 4. The City recently notified me and the Union that on September 14, 1999, a new firefighters contract was ratified which continued that language (which, as the City requests, I will accept in evidence as City Exh. 13).

[12] The parties have presented a good deal of evidence concerning the volume and types of disciplinary actions taken against police officers. Section 8 of the Act does not consider that to be a factor. The parties are free to address that issue under the remand structured in IV(C)(2), *infra.*

The City also points out (City Brief at 9) that it successfully prevented the Union's attempts to arbitrate certain discipline under the predecessor Agreement. *City of Highland Park v. Teamsters Local Union No. 714* (98 MR 137). Because the predecessor Agreement did not have a specific contractual provision to arbitrate discipline, a court could conclude that there was no agreement to arbitrate such matters. In Section 8's terms, the lack of such a provision could be construed to mean that the parties had "mutually agreed otherwise" with respect to arbitration of such disputes. However, because the Union now seeks such a right and the City opposes such a provision, the parties no longer can be said to

[footnote continued]

2. The Language

The parties have proffered specific language proposals consistent with their respective positions on discipline. I have agreed with the Union's basic position that Section 8 of the Act requires arbitration of discipline. However, because of its position that the Union's basic proposal should not be followed, the City has not addressed how the election procedure should work. It would be unfair at this time for me to choose the Union's proposed language or to structure my own without allowing the City the opportunity to address the issue knowing that a broader scope for arbitration of discipline than it sought is now required.

This issue is therefore remanded to the parties for a period of 30 days from the date of this award (or for any period agreed upon by the parties) for the purpose of negotiating the procedures, language, scope and standards to be used in implementing the election of forums. I shall retain jurisdiction over disputes concerning this issue. Should the parties fail to reach agreement and upon request by either party, I shall determine the appropriate language.

V. AWARD

1. Hospitalization Insurance

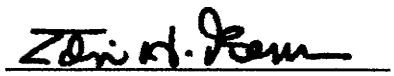
The City's offer is selected.

2. Residency

The City's offer is selected.

3. Discipline

The Union's offer to permit an employee the option of arbitration or appeal to the Civil Service Commission is selected. This issue is remanded to the parties for a period of 30 days from the date of this award (or for any period agreed upon by the parties) for the purpose of negotiating the procedures, language, scope and standards to be used with the undersigned retaining jurisdiction over disputes concerning this issue.



Edwin H. Benn
Arbitrator

Dated: September 26, 1999

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have "mutually agreed otherwise". Section 8's mandate now requires the arbitration provision which did not exist in the predecessor Agreement.